

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Corridor Television, L.L.P.
v.
Cox Cable Communications, Inc.
d/b/a Cox Cable Communications
Request for Mandatory Carriage of
Television Station KBEJ(TV)
CSR-5658-M

MEMORANDUM OPINION AND ORDER

Adopted: April 23, 2003

Released: April 28, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Corridor Television L.L.P. ("Corridor"), licensee of television broadcast station KBEJ(TV), Fredericksburg, Texas ("KBEJ"), filed the above-captioned must carry complaint against Cox Cable Communications, Inc. d/b/a Cox Cable Communications ("Cox"), asserting mandatory carriage rights for KBEJ on Cox's cable systems serving Jarrell, Pflugerville, Georgetown and Leander, Texas and the surrounding areas (the "cable communities").

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended ("Communications Act"), and implementing rules adopted by the Commission in Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, ("Must Carry Order"), commercial television broadcast stations, such as KBEJ, are entitled to assert mandatory carriage rights on cable systems located within the station's market.

1 Complaint at 1.

2 Id. at 2.

3 8 FCC Rcd 2965, 2976-2977 (1993).

4 Section 614(h)(1)(C) of the Communications Act, amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications that delineate television markets based on viewing patterns.

geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁵ One method of doing so is for the cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to the cable system's principal headend.⁶ For VHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -49 dBm.⁷ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights. Under the Commission's rules, a television station, at its own expense, may provide a cable operator with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁸

III. DISCUSSION

4. In support of its complaint, KBEJ states that it is licensed to Fredericksburg, Texas, which is in the Austin, Texas DMA.⁹ It states further that Cox's cable television systems are also located in the Austin, Texas DMA.¹⁰ KBEJ contends that because it is located within the same DMA as the Cox cable systems serving the cable communities, it is entitled to must carry status on the two Cox systems.¹¹ KBEJ asserts that Cox did not respond in writing to its December 15, 2001 request for mandatory carriage in the cable communities within 30 days of receipt of such request as required by Section 76.61(a)(2) of the Commission rules.¹² KBEJ notes that, in a late response, Cox denied its must carry request arguing that KBEJ was not entitled to mandatory carriage because KBEJ was not in the Austin, Texas DMA.¹³ KBEJ states that it is committed to "do whatever is necessary" to deliver a good quality signal to Cox.¹⁴ In opposition, Cox asserts that KBEJ does not deliver a good quality signal to its Georgetown, Texas headend.¹⁵ According to Cox, the signal strength tests it conducted on June 24 and 25, 2002, show that KBEJ signal strength at Cox's principal headends does not meet the -49 dBm threshold for VHF signals required by the Commission's rules.¹⁶ In addition, Cox states that carrier-to-noise ("C/N") measurements of 29.9 dB to 45.1 dB, taken on June 24 and 25, 2002, show that KBEJ's signal C/N levels fall short of the minimum engineering standards recommended by the National Cable Television Association ("NCTA").¹⁷ Cox asserts that KBEJ's C/N ratio is indicative of poor picture quality and argues that the

⁵ See *Must Carry Order*, 8 FCC Rcd at 2991.

⁶ 47 C.F.R. § 76.55(c)(3).

⁷ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁸ *Must Carry Order*, 8 FCC Rcd at 2991.

⁹ Complaint at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 1 and Exhibit A.

¹⁵ Opposition at 1. Cox states that the Georgetown, Pflugerville and Leander systems are integrated and served from a common headend. *Id.* at n.1.

¹⁶ Cox states that the tests revealed readings from -56.65 dBm to -50.85 dBm. Opposition at 2 and Exhibit A. See 47 C.F.R. § 76.55(c)(3).

¹⁷ Opposition at 5.

Commission should consider this element in deciding the instant complaint, as the Commission considered a station's poor signal-to-noise ratio in *WRNN-TV Associates Limited Partnership v. Cablevision Systems Corporation*.¹⁸ In support, Cox submits a videotape of a recording made on June 24, 2002, which purportedly supports Cox's assertions about the Station's lack of good picture quality.¹⁹ Moreover, Cox notes that KBEJ "recently attempted to reach an agreement by which the Station would be delivered over fiber of a third party," but that Cox is not a party to that agreement.²⁰

5. In reply, KBEJ reiterates that it will pay for the cost of delivering a good quality signal to Cox's Georgetown system.²¹ KBEJ states that it arranged with another cable company to digitalize its signal and deliver it to Cox via fiber, but that Cox has not responded to that offer.²² KBEJ argues that Cox should not be allowed to impose additional must carry requirements, such as picture quality, that are not authorized by statute or regulation.²³

6. In a request for an extension of time, dated May 21, 2001, Cox informed the Commission that it had conducted signal strength testing after the Station provided Cox with a new receive antenna, and reported that "although the [Station's] signal did meet the standards" for a good quality signal, the picture quality of KBEJ's signal was inadequate and did not meet the NCTA's signal-to-noise ratio standards.²⁴ In its reply, KBEJ asserts that the May 21, 2001 letter demonstrates that KBEJ meets the signal strength requirements promulgated by the Commission, and that it only needs to make minimum adjustments to its signal to satisfy the Commission's signal strength threshold.²⁵

7. We grant KBEJ's must carry complaint conditioned upon the delivery of a good quality signal to Cox's principal headends in Georgetown and Jarrell, Texas. In doing so, we note that under the Commission's rules, a station's failure to provide the requisite over-the-air signal quality to a cable system's principal headend will not foreclose its carriage on the cable television system if the station, at its own expense, provides the cable operator with the specialized equipment necessary to improve the station's signal to an acceptable quality.²⁶ We find that KBEJ has satisfied the criteria for carriage by agreeing to pay for the cost of delivering a good quality signal to Cox's Jarrell system, and to Cox's Georgetown system via a fiber optic link or over the air utilizing specialized equipment. The Commission has stated that specialized equipment may be employed to deliver a good quality signal to a cable system headend. The Commission, in its *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues Clarification Order* ("Must Carry Clarification Order"), after re-emphasizing that it was the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend, stated: "This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements..."²⁷ Further, because KBEJ has agreed to provide specialized

¹⁸ 13 FCC 12654, 12661 (1998) (where the Commission considered the issue of poor picture quality). Opposition at 3-5.

¹⁹ Opposition at Exhibit B.

²⁰ *Id.* at 3.

²¹ Reply at 2.

²² *Id.*

²³ *Id.*

²⁴ Extension of Time Letter dated May 21, 2001.

²⁵ Reply at 2.

²⁶ *Must Carry Order*, 8 FCC Rcd at 2991; *see also* 47 U.S.C. § 534(h)(1)(B)(iii).

²⁷ *Must Carry Clarification Order*, 8 FCC Rcd 4142, 4143 (1993).

equipment enabling it to provide a good quality signal to Cox's principal headends, we need not address the arguments raised in the record concerning KBEJ's C/N readings. In view of the above, we grant KBEJ's complaint.

8. Concerning Corridor's channel positioning request, we find that it has properly requested carriage on channel 2 of Cox's systems, the same channel number on which KBEJ is broadcast over-the-air. Pursuant to the Commission's rules, cable operators must comply with the channel positioning requirements absent a compelling technical reason.²⁸

IV. ORDERING CLAUSES

9. Accordingly **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the complaint filed by Corridor Television L.L.P. **IS GRANTED**. Cox Cable Communications, Inc. d/b/a Cox Cable Communications **IS ORDERED** to commence carriage of television station KBEJ(TV) on Channel 2 of its cable system serving Georgetown, Pflugerville and Leander, Texas and the surrounding areas within 60 days from the date that station KBEJ delivers a good quality signal to Cox's Georgetown principal headend.

10. **IT IS FURTHER ORDERED** that Cox Cable Communications, Inc. d/b/a Cox Cable Communications commence carriage of television station KBEJ(TV) on Channel 2 of its cable system serving Jarrell, Texas and the surrounding areas within 60 days from the date that station KBEJ delivers a good quality signal to Cox's Jarrell principal headend.

11. This action is taken pursuant to authority delegated pursuant to Section 0.283 of the Commission's rules.²⁹

FEDERAL COMMUNICATIONS COMMISSION

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²⁸ 47 C.F.R. § 76.57; *see Must Carry Order* at 2988.

²⁹ 47 C.F.R. § 0.283.